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THE UNIQUE CHALLENGES TO PROSECUTING DOMESTIC VIOLENCE CASES

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The Unique Challenges to Prosecuting Domestic Violence Cases

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Goals & Objectives



1. Understand the unique Evidentiary & Disclosure issues associated with DV cases
2. Learn more about & protect yourself from the impact working on DV cases can have to your own health & well being
3. Recognize your integral role in a successful trial presentation

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What is DV?

Domestic violence is a pattern of behavior that includes the use or threat of violence and intimidation for the purpose of gaining power and control over another person. Violence is characterized by: Physical Abuse, Sexual Abuse, Economic Abuse, Isolation, Emotional Abuse, Control, or Verbal Abuse.

<http://www.azcadv.org>

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What is DV under Arizona Law?

- Arizona Revised Statutes § 13-3601. Domestic violence
- "Domestic violence" means any act that is a dangerous crime against children as defined in section 13-705 or an offense prescribed in [the following sections]
 - section 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1502, 13-1503, 13-1504, 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623,
- if any of the following applies:

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Relationship Test – 13-3601A

1. The relationship between the victim and the defendant is one of **marriage** or former marriage **Or** of persons residing or having resided in the **same household**.
2. The victim and the defendant **have a child** in common.
3. The victim or the defendant is **pregnant** by the other party.
4. The victim is related to the defendant or the defendant's spouse by **blood or** court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent **-in-law**, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
5. The victim **is a child** who resides or has resided in the **same household as the defendant** and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.
6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently or was previously a **romantic or sexual relationship**.

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DV Offenses

- | | |
|--------------------------------------|---|
| • 13-1102 – Negligent Homicide | • 13-1602 – Criminal Damage |
| • 13-1103 – Manslaughter | • 13-2810 Interfering Judicial Proceedings |
| • 13-1104 – 2 nd Murder | • 13-2904 – Disorderly Conduct (subsection A, paragraph 1, 2, 3 or 6) |
| • 13-1105 – 1 st Murder | • 13-2910 – Cruelty to Animals (subsection A, paragraph 8 or 9) |
| • 13-1201 – Endangerment | • 13-2915 – Preventing the Use of the Phone in an Emergency (subsection A, paragraph 3) |
| • 13-1202 – Threatening/Intimidating | • 13-2916 – Use of Electronic communication to terrify, intimidate or harass |
| • 13-1203 – Assault | • 13-2921 – Harassment |
| • 13-1204 – Aggravated Assault | • 13-2921.01 – Aggravated Harassment |
| • 13-1302 – Custodial Interference | • 13-2923 – Stalking |
| • 13-1303 – Unlawful Imprisonment | • 13-3019 – Surreptitious pics, videos, etc |
| • 13-1304 – Kidnapping | • 13-3601.02 – Aggravated DV |
| • 13-1406 – Sexual Assault | • 13-3623 – Child/vulnerable adult abuse |
| • 13-1502 – Criminal Trespass 3rd | |
| • 13-1503 – Criminal Trespass 2nd | |
| • 13-1504 – Criminal Trespass 1st | |

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Other things §13-3601 provides...

- (B) – mandatory arrest if injuries, deadly weapon, dangerous instrument
- (C) – Seizure of firearms- 72 hour hold
- (I) – release condition to protect the victim
- (J) – written procedures and resources available for the protection of the victim
- (M) – pregnant victim + 2 years

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Not all “Relationships” are DV

- Common misconceptions are that all “romantic” relationships are DV.
 - However this is not always accurate.
 - One night stands may not qualify as DV
 - Must consider factors of relationship
- Common misconceptions are that all “familial” relationships are DV
 - No cousins, aunts, or uncles
 - UNLESS, live together.



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The
"domestic"
part doesn't
matter.
Violence is
violence.

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Discovery Dilemmas



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Cycle of Violence



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“Other Acts” Evidence

- Arizona Rules of Evidence, Rule 404(b):

Other crimes, wrongs, or acts. Except as provided in Rule 404(c) evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

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Examples of “other acts” evidence

- Prior threats
- Prior acts of violence
- Evidence of the cycle of violence
- Animal abuse
- Evidence of manipulation or coercion
- Evidence of controlling past behavior
- Prior violence towards other partners
- Patterns of behavior

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Maricopa County Sheriff's Office Paul Penzone, Sheriff									
INCIDENT REPORT									
Report Date 01/02/2019	Reported Time 20:24	IR # 019004173	Originality ORIGINAL	Next Step [X] Yes	IR Status Open	Case Status Submitted	IR # MC19029271		
Serial # 02174	Last Name PEREZ	Reason for Issue							
Being Contacted Activated?	Yes	Reason for Issue: no contact with public							
Being in Contact Activated?	Yes								
Radio Code NADY RV	From Date 01/02/2019	From Time 19:48	IR-1 Page Requested No						
Location [REDACTED]	To Date 01/02/2019	To Time 19:48	The number of Additional MCSO Personnel On Scene						
If a case is closed in another MCSO									
Related Incident: 019004138									
Related Incident: 019012200									
Related Incident: 019018228									
Related Incident: 019020277									
Related Incident: 019024626									
Related Incident: 019025009									
Related Incident: 019026001									
Related Incident: 019026003									
Related Incident: 019026775									
Related Incident: 019026800									
Related Incident: 019026761									
Related Incident: 019021395									
Related Incident: 019023241									
Related Incident: 019023247									
ON 01/02/2019 at 1948 hours [REDACTED] initiated a court order by sending [REDACTED] per email outside the parameters set in Order of Protection FCD018-003204									

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What About the Victim's Past Acts?

****PREVIOUS INCIDENTS****

ON 11/11/2015 REFERENCE 201500002109049, W [REDACTED] WAS ALLEGED TO HAVE PUSHED M [REDACTED] AT THEIR APARTMENT. THIS CASE WAS CLOSED WITH LIMITED INFORMATION FOR PROSECUTION.

ON 01/14/2017 REFERENCE 201700000083307, W [REDACTED] ALLEGED HE WAS ASSAULTED BY C [REDACTED] AND AN UNKNOWN MALE WHERE HE SUFFERED SMALL CUTS ON HIS FACE AND BACK OF HIS HEAD. THIS CASE WAS PENDED FOR SUSPECT CONTACT.

I WAS UNABLE TO LOCATE ANY OTHER INCIDENTS INVOLVING THESE SUBJECTS.

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Disclosure Obligations

- Brady
 - Anything potentially exculpatory
 - Prior misdemeanor convictions for dishonesty (Rule of Evidence 609)
 - Prior acts of violence towards the defendant (Rule of Evidence 404)
 - Prior recantations (Rule of Evidence 608)
- Exculpatory
 - Felony convictions
 - Pending felony cases
 - All recorded statements about the offense (recorded = in writing, or audio/video)
 - E.g. text messages, emails, letters, OOP affidavits
- Impeachment
 - Anything that can call a witness's testimony into question must be disclosed

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Disclosure Obligations (cont'd)

- Protected Information
 - Psychological records
 - Counseling records
 - School records
 - Financial records
 - Prior unrelated medical records
 - Cell phone/computer content
- Defense counsel must demonstrate exculpatory information
 - If it's not obvious, then the defendant has to show why

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ORDERS OF PROTECTION

- Protection Orders are:
 - Civil court orders prohibiting a specific person from making contact with you, such as coming near your home, workplace, school, or other locations as listed in the order.
 - Based on the relationship you have with the party you are seeking protection from.
 - Issued by a judge and must be served by a police officer, deputy sheriff, or process server.
 - Effective for 12 months from service date.

Information from Maricopa County Superior Court website.

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ORDERS OF PROTECTION

- Protection Orders can:
 - Restrain a defendant from committing acts of violence and harassment.
 - Prohibit a defendant from contacting or coming into contact with you.
 - Provide you with legal recourse if the person served with a protective order violates that order.
- Protection Orders cannot:
 - Resolve landlord/tenant disputes.
 - Change custody or visitation orders.
 - Guarantee your safety.

Information from Maricopa County Superior Court website.

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ORDERS OF PROTECTION

- No fee to file a Petition for Order of Protection.
- Can be obtained in person at the Maricopa County Superior Court, any justice court, or any city court, regardless of the location of the plaintiff or defendant.
 - No online form—must appear in person before a judge to obtain protective order.
- Can include more than one protected person in the protective order (such as children, relatives, or a babysitter) and multiple protected addresses.
- Defendant has the right to challenge the protective order by requesting one hearing within one year from the date he/she is served with the protective order.

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Superior Court of Arizona AZ007938J0700 201 W. Jefferson Phoenix, AZ 85003

Plaintiff	Defendant	Case No.
Birth Date	Address	
	City, State, ZIP Code	

PETITION for
☒ Order of Protection
☐ Injunction Against Harassment
☐ Workplace Injunction

4. I need a Court Order because:
 Date(s) Describe what happened
 05/21/2012 I received a text message from [redacted] with some demeaning content on 05/21/2012. Late Saturday night (05/19/2012), I was out with friends and he tried contacting me by phone (including leaving a couple of messages on my voicemail stating what he is going to do to me), after not responding he then came to my home where our 18yr. old daughter & 10yr old son and my 14yr. old daughter were home alone. The children contacted me and told me not to come home as he kept knocking on the door, they were afraid and let him inside the home due to him kicking the door in a few months ago (the police were notified) He sat inside and outside my home until 10 am Sunday morning. As I did not return to the residence, he continued to call and refused to let me home on several occasions waiting for me to return. I have been back in Arizona for 10 months after leaving the relationship and within those ten months he has tried to run me and my children off the road. He has physically abused me by hitting me in the face and causing my nose to bleed. In 01/2012, he forced me to go to visit statistics and allow for his name to be added to our son's birth certificate and then broke into my home and removed him and his belongings to his residence. (The police were notified.) He continues to tell me that I cannot and will not be involved with another male as long as I reside in Arizona and for this reason he continues to harass me and my children.

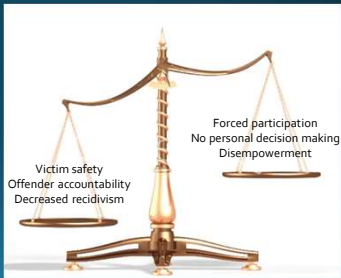
I am scared for our safety and what will happen to us in the near future. I plan to leave the state of Arizona within the next 2 weeks to prevent from anything further occurring as I feel that he will cause physical and emotional harm to me and my children.

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Uncooperative Victims or Witnesses

Generally, a victim or witness' unwillingness to later aid in prosecution does not prevent the State from proceeding with the case.

There are significant public policy concerns supporting "no drop" policies (e.g. MCAO Domestic Violence Protocol).



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Recantation

- To recant or "take back" previous claims
- To withdraw or repudiate prior statements or testimony formally and publicly

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FORFEITURE BY WRONGDOING

- Declarant (victim) must be unavailable as a witness
- Prosecutor must make a good-faith effort to obtain witness' presence
- Defendant committed an act (some "wrong-doing") designed to prevent the witness from testifying
- The witness did not appear to testify

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DV Forfeiture

Through a study published in the Social Science & Medicine Journal about the interpersonal processes associated with victim recantation, the authors found that there were three main ways abusers induced victims to recant:

1. Minimization of the Abuse Event
2. Appeals to the Victim's Sympathy
3. Invocation of Images of Their Life Together/Life Without Each Other

(see Honeymoon Phase of Cycle of violence)

"Meet me at the hill where we used to park": Interpersonal processes associated with victim recantation
Social Science & Medicine Journal, Vol. 73, 1054-1061. A. Bonomi, R. Gangamma, C. Locke, H. Katafiasz, & D. Martin

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The Jail Call:



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Jail Call #1: Plead the 5th, you don't remember

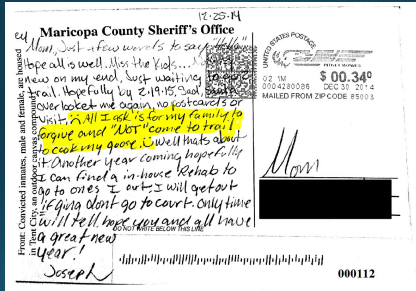


Jail Call #2: Just want us to be together



Jail Call #3: Fantasy of them together

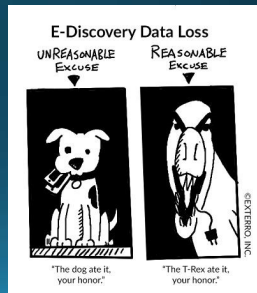
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Redaction Issues

- ❖ Body Worn Cameras
- ❖ Recorded Interviews
- ❖ Medical Records



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Child & Vulnerable Adult Abuse

- Find the documents
 - Medical records
 - Offsite providers/outpatient records
 - Prior medical records
 - Scans/x-rays/imaging
 - Common forms not included in records (e.g. brain death checklist)
 - School records
 - School nurse records
 - Behavioral citations
 - Registry of parents
 - Attendance logs
 - Caretaker records
 - Schedules/contracts
 - Patient complaints
 - Caretaker employee files
 - Financial records
 - Bank accounts
 - Utility bills
 - Wills/trusts
 - Receipts

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Constantly need to be thinking outside of the box



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Protect Your Own Health



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VICARIOUS TRAUMA

- Vicarious trauma, also referred to as compassion fatigue or secondary traumatic stress, refers to the negative reactions that can occur when professionals repeatedly witness or hear about victims' difficult experiences of trauma, violence, and abuse.
- Signs resemble post-traumatic stress disorder, and can include emotional, behavioral, and physical symptoms, such as anxiety, depression, disturbed sleep, change in appetite, irritability, nightmares, loss of empathy, and numbness.

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Signs and Symptoms

- Having difficulty talking about feelings
- Free floating anger and/or irritation
- Startle effect/being jumpy
- Over-eating or under-eating
- Difficulty falling asleep and/or staying asleep
- Worry that you are not doing enough
- Dreaming about the traumatic experiences
- Diminished joy towards things you used to enjoy
- Feeling trapped by your work
- Diminished feelings of satisfaction and personal accomplishment
- Dealing with intrusive thoughts of the trauma
- Feeling of hopelessness associated with your work
- Blaming others

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Effect on Job Performance

- Low motivation
- Increased errors
- Decreased quality
- Avoidance of job responsibilities
- Over-involved in job/perfectionism
- Lack of flexibility



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Minimize the Risk of Vicarious Trauma

- Develop self-care and stress management strategies i.e. exercise, build a strong social or community network, practice relaxation techniques, make time for extracurricular activities
- Establish formal support structures and safe spaces at work
 - Peer Support
 - Discuss with supervisor
 - Discuss with team
- Talk with a mental health professional
- Establish professional boundaries
- Participate in capacity-building and training

Tips from the U.S. Department of State

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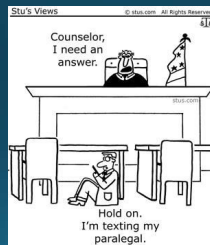
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Dealing with Angry/Hostile Victims

- Empathy
 - Understand that they are caught in the cycle
- Patience
 - Sometimes they just want to vent or be heard
 - Don't take it personally
- Tolerance
 - Listen, but don't let them abuse you
 - Use your attorney as a buffer if it goes too far
- Memorialize
 - Note the time, date, and substance of the interaction (it could be helpful later)

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Integral Part of Trial Team



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LAST MINUTE REDACTIONS

- ❖ Based on rulings in the case or even whether a victim appears, there can be numerous last minute redactions urgently needed.

Time (Approx.)	Statements (Paragraphs)	Interview w/ OR: Carrasco
8:23-8:27	Was he wouldn't do it closed hand cuz he knows I brute easily. [redacted]	
8:28-31	Was I gonna be safe, we will do our best to keep you safe. [redacted] I know he has.	
8:33-8:44	Right now you are saying you don't want to prosecute is because you are in fear. [redacted]	
8:44-8:55	She is going to give us the key with consent to go in	
8:55-9:11	Well, dude keep your car on I'm staying with you	
9:13-10:11	Audie is off while officer looks for documents in car so there is no need for this to play to the jury	
10:34-10:41	Continuation on phone with Mr. Cherry: "we need to speak to you about what occurred, okay so you're not going to come out and talk to us, well it's going to be in your best interest to come to the door with your hands up so we know you don't have any weapons, I need you to come to front door and open door and talk to officer because we have some questions, etc...there are some marks on leg that are questionable..."	
10:45-20:04	Martin's conversations with Sgt Hale (officer not being called)	
20:06-20:45	Two's releasing officers talking	
21:20-23:06	Carson talking to officers on phone (one of officers is not being called)	
23:06-28:26	Silent	
28:45-28:54	Conversation about anything damaged in the home	
30:00-30:18	Did he open the door. Yea he came out and has been placed in cuffs	
31:21-40:52	Silence and officer driving	
40:52-41:10	Was he ever threatened to kill you, yes?	
41:02-41:44	Both walk in and are talking and officer talks to kids	
41:44-44:19	Silence with kids on camera and toys, etc	
Need to keep audio but black out that he is filling out form during 44:19-45:50, is there a way to do that?		
45:50-to end	Both and family around	

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ADMITTING PRIOR STATEMENTS

- Arizona Rule of Evidence, Rule 803(4): exception to hearsay to allow prior statements made for and reasonably pertinent to medical diagnosis or treatment.
 - *State v. Robinson*: this can include the perpetrator's identification
- Arizona Rule of Evidence, Rules 801 & 806: prior consistent/inconsistent statements may be admitted to attack/rehabilitate credibility
- Arizona Rules of Evidence, Rule 803(5): prior recorded statements may be admitted
 - *State v. King*: prior statements admissible if "feigned memory loss"

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Victim Location

- Vanishing before trial
 - Investigators
 - Advocates
 - Family members
 - Case agents
 - Neighborhood enforcement teams
- Probation/parole officers
- Jail calls/video visits/jail mail
- Social media
- Shelters

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Expert Witnesses

- Finding the right one
- Establishing an agreement
- Sending the appropriate evidence
- Setting up travel
- Scheduling interviews
- Paying their bill
- Keeping them on schedule



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